

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0610P

Sales & Use Tax

Calendar Years 1996, 1997, & 1998

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed as a result of a use tax assessment from an audit conducted for the calendar years 1996, 1997, and 1998.

The taxpayer manufacturers computerized numerical control systems for machine tools used by short-run manufacturing shops and independent job shops throughout the world. The taxpayers commercial domicile is in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the penalty is improper as the error was a result of turnover in personnel responsible for payables, and, the error rate is an immaterial amount.

The Department points out the error rate is approximately 30% of the use tax self-assessed by the taxpayer during the audit period. The Department finds this error rate to be a material error. Further, the error also occurred in the previous audit.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.